South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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Legislative Update

Sovereign Immunity and Its Loss--
What Other States Are Doing

Background

Sovereign Immunity is the doctrine that a government cannot be held responsible in the same way an individual or private concern can be. In other words, the state cannot be sued because of the negligence of its employees. Last spring the South Carolina Supreme Court struck down the doctrine, thus reversing a legal trend that began in 1822. This left the state open to law suits by individuals who felt they have suffered wrongs--"torts," in legal terminology--because of negligence or improper actions by state employees.

If persons could sue the state, there was the possibility that they could win enormous judgements--amounting to millions of dollars. It seemed that the state had gone from being completely protected to being totally vulnerable. The Legislature responded by introducing the "Tort Claims Act" (H.2266), which sets limits to the amount of damages that could be collected; exempted certain governmental operations from suit; and providing for the filing and processing of claims.

The proposal sets the limit for losses arising from a single occurrence at $500,000 and denies punitive damages. No one person could recover more than $250,000.

Kentucky Supreme Court Strikes Down Sovereign Immunity

South Carolina is not alone in dealing with this situation. The Kentucky Supreme Court has made a ruling that restricts the doctrine of municipal immunity in that state. The case involved a gas line explosion that destroyed some buildings in London, Kentucky in January, 1979. Suits were lodged against the city, claiming that its sewer workers had cut holes in a gas line during sewer repairs.

In the initial suit and a later appeal, the case was dismissed because of the city's sovereign immunity. The state supreme court, however, ruled that cities are liable for damages except those resulting from "the exercise of legislative or judicial ... functions." Since repairing sewers is neither a legislative nor a judicial function, London is liable.

California Considers Immunity Law

California lawmakers have proposed a bill to protect cities by repealing the doctrine of "joint and several liability." Under this doctrine, cities can be charged with a total damage award, even if other defendants are also responsible--but are unable to pay. The proposed bill would require courts to assess damage awards against defendants (including public bodies) in respect to their portion of responsibility for an accident.

Cities and public agencies could still be brought to court and held liable for actual damages, but any awards for "non-economic" losses (such as pain and suffering, mental anguish, etc.) would be "assessed according to the public agency's share of the blame," according to *From the State Capitals*.

Louisiana Limits Awards, Puts Proof on Plaintiff

In response to the situation, Louisiana seems to be following the South Carolina model, in limiting the amount of awards to $500,000. Some of the other measures under consideration would: 1) limit the date from which interest can be collected on a lawsuit against a government; 2) require a plaintiff to prove that a government official had been negligent; 3) abolish the doctrine of strict liability, which holds a government responsible for defects under its control whether it knows about them or not.

According to a member of the Louisiana House quoted in *Justice Policies*, the state faces lawsuits amounting to $2.2 billion. So far, state courts have awarded $40 million in damages against Louisiana state government agencies.

New Hampshire Waits On No Court

In South Carolina and other states, the courts created sovereign immunity, and the courts have struck it down. The New Hampshire legislature seems ready to take action before the court strikes.

A measure passed by the New Hampshire House would abolish the doctrine of sovereign immunity, and limit awards for injury or damage due to state negligence to $250,000 per person, and $2 million per incident.

Rep. Donna Sytek, Chairwoman of the House Judiciary Committee, says the bill would strike a fair balance between the rights of government and those of the individual.

Prison Overcrowding: S.C. Is Not Alone

Background

The Nelson v. Leeke lawsuit focussed attention on the overcrowded conditions in South Carolina's correctional system. While some lawmakers argue for revised sentencing guidelines and crime bills to reduce the number of prison inmates, there is strong support in the community at large for tougher, longer sentences for convicted criminals. Estimates of the costs needed to provide additional facilities run as high as $70 million--and that's just for construction alone, not maintenance.

The situation is not unique to South Carolina. States across the country are facing similar headaches. What are some of them doing? *Legislative Update* took a look at some approaches.

Correction Reform, Texas Style

According to *From the State Capitals,* the Texas prison population is growing at the rate of 240 inmates a month. Like South Carolina, the state had been embroiled in a lengthy lawsuit over prison conditions; also like South Carolina, an agreement was reached to settle the dispute out of court.

It will be costly. The 1986-87 budget has a total of $953.5 million for corrections. $178.5 million of that goes for new construction and renovation. The construction will include dormitories for low-risk prisoners and a new maximum-security structure to hold 2,250 inmates.

As a result of the changes, the number of inmates in Texas will be reduced over a four-year period from 38,000 to 32,500.

Louisiana Legislation to Lessen Overcrowding

Bills passed by the Louisiana Legislature last session are aimed at reducing prison overcrowding through various methods--including the possibility of contracting with private prison operators (see research report in this issue for background on this subject).

$7.5 million was allocated for planning five medium-security prisons. An additional 100 probation/parole officers will be hired, and the workload of all such officers will be limited to 50 persons. In addition, persons on probation will be required to pay part of their supervisory costs.

Finally, the Governor's Task Force on Prison Overcrowding will study the feasibility of contracting with the private sector to take over some or all of the state's correctional services. A related Louisiana House Bill would allow private companies to build prisons, which would then be secured by the state under a lease-purchase agreement. Private corporations would also be allowed to manage the correctional facilities under an arrangement with the state.

Tarheel Triple Bunking; New York Visitation Rights

Another lawsuit (what else is new?) in North Carolina is likely to force that state to spend about $10 million to improve prison facilities. The chief problem is the practice of "triple bunking," or stacking bunk beds three high in the prison dormitories. Additional bed space would relieve the need for the stacks.

Plans have been dropped to build a 1,000 bed maximum-security prison in New York City. According to New York officials, 70% of the state's prisoners come from the Big Apple; siting the facility there would make it easier for their families to visit them. But it now looks as if the inmates will be literally going "up the river."

The city prison was originally budgeted at between $100 and $125 million. Changes in the estimates, however, shot the price tag up to over $200 million. Unwilling (and perhaps unable) to spend this amount, correctional officials are considering two 500-cell prisons, located in upstate, rural areas.

Away Out West

Arizona is planning to add some 1,100 new prison beds to its system, at a cost of $27.2 million. Nevada needs two new facilities. A "light security" facility is planned at $10 million; a maximum-security prison for 400 inmates will cost between $30 and $40 million.

Meanwhile, in South Dakota, a federal judge has ordered the state to make improvements in its prison system. Standards must be improved in such areas as fire safety, medical care, nutrition, and legal assistance.

What Does It All Mean?

Two forces have combined to put states in an unenviable position. On the one hand, society seems to be insisting on tough treatment of criminals, including longer prison terms. On the other hand, federal courts have been consistent in requiring correctional systems to provide adequate facilities and treatment for prisoners. While some may see this as "coddling" prisoners, the courts have made it clear that failure in this area constitutes "cruel and unusual punishment," which is expressly forbidden by the U.S. Constitution.

There seems little likelihood, then, that states will be able to do less for their prison systems. Many states have the problem of bringing their system up a minimum standard; this will require relatively large expenditures in a short period of time. After that, the sums required for upkeep and continued improvements will not be quite as burdensome--but they will be substantial.

Supreme Court Strikes Sabbath No-Work Law-- Will South Carolina Feel the Effect?

Background

In its 1985 session, the South Carolina General Assembly revised the state's three-hundred year old Blue Laws. Stores were permitted to open after 1:30 pm on Sundays, and could remain open as long as they wished. Restrictions as to items available for sale (with the exception of alcohol) were dropped.

The revisions also included a "conscientious objector" clause, which allowed persons the right not to work on Sunday, or on Saturday if that is their Sabbath day. A recent ruling by the United States Supreme Court has brought this issue to public attention again. The Court has overturned a Connecticut law which gave employees the right not to work on their Sabbath. Why did the Court rule this way? What effect might it have on the South Carolina situation?

The South Carolina Statues on Sabbath Work

The Blue Law revisions of 1985 contain the following section:

> Any employee of any business which operates under the provisions of this section has the option of refusing to work in accordance with provisions of Section 53-1-100. Any employer who dismisses or demotes an employee because he is a conscientious objector to Sunday work is subject to a civil penalty of triple the damages found by the court or the jury plus court costs and the employee's attorney fees.

The statute later adds that there may be no "discrimination against persons whose regular day of worship is Saturday."

The Code section mentioned in the law, 53-1-100, established the right of conscientious opposition to Sunday work. The section states that "No person shall be required to work on Sunday who is conscientiously opposed to Sunday work." It goes on to protect the objector from loss of seniority rights or other kinds of discrimination.

The Connecticut Case

In 1976 the Connecticut Sunday-closing laws were declared "unconstitutionally vague" and struck down by a state court. The legislature rewrote the laws, permitting certain businesses to remain open on Sunday. It also included the following provision:

> No person who states that a particular day of the week is observed as his Sabbath may be required by his employer to work on such day. An employee's refusal to work on his Sabbath shall not constitute grounds for his dismissal.

Donald Thornton was a manager of the men's and boy's clothing department in one of a chain of New England stores. In 1979 he notified his employers that he would no longer work on Sundays, because he observed that day as his Sabbath. Thornton was offered a position in a Massachusetts store which did not open on Sunday, or a nonsupervisory position at lower pay in Connecticut. He refused both options. In 1980 Thornton was transferred to a clerical position; he resigned and filed a grievance with the State Board of Mediation and Arbitration. He claimed he had been discharged in violation of the provision cited above.

The Board ordered Thornton reinstated. The case was appealed and a Superior Court upheld the Board. The case was appealed again, and the Connecticut Supreme Court overturned the ruling and held that the "no Sabbath work" statute was unconstitutional. Finally, the case was appealed to the United States Supreme Court, which agreed with the Connecticut Supreme Court. (Estate of Donald E. Thornton and Connecticut, v. Caldor, Inc. Hereafter referred to as Thornton. Thornton died in February, 1982; the administrator of his will continued the suit. To paraphrase Horace, *Counselari certant et adhunc sub iudice lis est:* Lawyers dispute, and the case is still before the courts.)

What the Supreme Court Said

The Court explained that, under the Constitution, "Government must guard against activity that impinges on religious freedom, and must take pains not to compel people to act in the name of any religion." In essence, the Court said that people have a right to freedom of religion, and a right to freedom from religion.

The Connecticut law, according to the court, put a specifically religious concern--Sabbath work--ahead of any other concerns. The Court wrote:

> The State thus commands that Sabbath religious concerns automatically control over all secular interests at the workplace; the statute takes no account of the convenience or interests of the employer or those of other employees who do not observe a Sabbath.

The Court noted that the law did not take into account such circumstances as persons who observed a Friday Sabbath; what effect would come from many employees choosing the same Sabbath day; no concern about possible economic burdens on employers or other employees; and no consideration if the employer made "reasonable accommodation proposals."

The law had the effect of advancing one religion; and this advancement was neither incidental nor remote. Such advancement of religion is one of the tests for the constitutionality of such laws--see below.

In a concurring opinion, Justice Sandra Day O'Connor wrote:

> All employees, regardless of their religious orientation, would value the benefit which the statute bestows on Sabbath observers--the right to select the day of the week in which to refrain from labor. Yet Connecticut requires private employers to confer this valued and desirable benefit only on those employees who adhere to a particular religious belief. The statute singles out Sabbath observers for special and, as the Court concludes, absolute protection without according similar accommodation to ethical and religious beliefs and practices of other private employees.... As such, the Connecticut statute has the effect of advancing religion, and cannot withstand Establishment Clause scrutiny.

The Establishment Clause and the Lemon Test

The "Establishment Clause" is the First Amendment to the U.S. Constitution, which states that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

Exactly what this language means has been the center of debate for almost two hundred years. The debate has heated up during the last three decades, as the Supreme Court has issued a series of rulings that seek to preserve "the wall of separation between church and state." Most notable, of course, have been the rulings regarding prayer in public schools.

In the case of Lemon v. Kurtzman (1971) the Supreme Court laid down a three-part standard to determine violation of the Establishment Clause. The three points to be considered when testing a law are:

1. It must have a secular, non-religious purpose;
2. It must have a primary effect that neither advances nor inhibits religion;
3. It does not excessively entangle government with religion.

The Connecticut law could be faulted on all three grounds. First, its purpose is not secular but religious, since it speaks not merely of a day off, but a Sabbath day. Second, it clearly advances religion, specifically that which has a Sabbath. Third it does entangle government with religion, since the State Mediation Board had to decide which religious activities could be considered "observance of the Sabbath."

South Carolina's Conscientious Objector Clause

As noted above, the Blue Laws revision passed last session included provisions to safeguard employees who had "conscientious objections" to working on Sunday. In light of the Supreme Court ruling, many are now asking: is this constitutional? No one can out-guess the Courts, whether national or state, but there are at least three points to consider.

First, does "conscientious objector to Sunday work" have a specifically religious meaning? Neither the Blue Law revisions nor Code section 53-1-100 give any explicit reason why a person might abstain from Sunday work; they merely assert that he has the right not to work on that day. However, since Sunday is the traditional day of Sabbath observance for most Christians, there might be an implicit connection between conscientious objection to Sunday work and religion.

Would such an implicit connection be enough to establish "entanglement" between state and religion? Would a court see the law as advancing religion? Perhaps most importantly, is the conscientious objector clause primarily secular in purpose and intent?

In Thornton, the Connecticut Supreme Court pointed out that the benefit of a day off was granted "on an explicitly religious basis." Given the close, traditional connection between Sunday and religious observances, is this benefit under South Carolina law also being granted on a "religious basis?"

Second, there is protection in the statute for persons who lease retail businesses. The law states that they cannot be forced by a franchisor to open on Sunday; in addition, "nor may there be discrimination against persons whose regular day of worship is Saturday." This seems to mean that a person who wants to close on Saturday for religious reasons cannot be forced to keep his establishment open.

Does this protection bring the state into the religious arena? By making it a requirement that Saturday must be a "regular day of worship" for the individual to be protected, the law might be violating the three-pronged Lemon test. It might be argued that this language shows that the law is not secular in purpose; definitely has the impact of advancing religion; and, since the

state pledges to enforce the law, it brings the state into definite religious entanglements.

Third, courts frequently refer to legislative intent when deciding cases. Considering the Blue Law revisions, it is possible that non-secular purposes could be inferred for the conscientious objector clause. The Saturday day of worship language, because of its specific nature, might tend to support this line of reasoning.

Blue Laws Protecting a "Day of Rest"

Courts have upheld a number of state blue law statutes. In 1961, in the case of McGowan v. Maryland, the Maryland Supreme Court held that blue laws which have the secular purpose of "providing a day of rest for working persons and an atmosphere of tranquility in which to enjoy it," are acceptable. This view was recently reinforced by the Maryland High Court in the case of Supermarkets General Corp. v. Maryland (1980).

From an article in the *Maryland Law Review* by Neil J. Diloff (who represented the unsuccessful defendant in the Maryland case) it appears that courts are apt to uphold blue law statutes if the law has a secular purpose; if there is a fair and substantial relationship between the intent of the legislation and the methods of its implementation; and if enforcement is not discriminatory.

Conclusion

Do the Blue Law revisions need revising once again? That question has already arisen among legislators. This *Research Report* cannot answer that question; it only provides some reference points and suggests some questions that bear on the subject.

The language that protects persons whose "regular day of worship" is Saturday seems to suggest religious involvement by the state; such "entanglement" is clearly out of bounds according to Supreme Court Rulings. It might be possible to phrase the same protection, but in secular terms.

The key point, however, might well be if a "conscientious objector to Sunday work" is primarily a religious or a secular concept. If it is secular, there should be no problems. If the courts consider it religious, however, then the long and stormy history of South Carolina Blue Laws might not yet be over, after all.

Prepared by House Research Office, 7/85/5822

Fifteen Years of Progress:

A Look Back at Recommendations Made by the Citizens Conference on State Legislatures

Background: Grading the Legislatures

It often seems that the public and the news media find it all too easy to criticize state government, particularly the legislature. While no institution is ever perfect, it is important to keep in mind the remarkable achievements made by the South Carolina General Assembly during recent years. In fact, it is possible to measure the progress made by this state's legislature over the past fifteen years, because of a study done in the late 1960s by the Citizens Conference on State Legislatures.

That study looked at our General Assembly and made specific recommendations for its improvement. Members of the Legislature will be heartened, and their critics possibly surprised, to see how many of those recommendations have been put into place by the General Assembly.

The Citizens Conference on State Legislatures

The Citizens Conference on State Legislatures was founded in 1965. It was based on the conviction that the most potentially effective and constructive level of government was that of the state legislature: close enough to the individual citizen to understand his or her problems; yet widely-based enough to cut across purely local lines. The Citizens Conference defined its mission as being: "a private, nonprofit, nonpartisan organization to help transform state legislatures into 20th-century institutions of government....genuinely creative institutions capable of anticipating public needs and originating public policy..."[*The Sometime Governments*, p 4; all subsequent quotations are from this publication.]

The Citizens Conference studied the operating procedures of the fifty state legislatures, without evaluating their legislation as "good" or "bad." The Conference called this survey the Legislative Evaluation Study, and it was supposed to measure how well

legislatures could make decisions, considering their "structure, organization, rules, procedures, and practices." The study took fourteen months and over $200,000 (provided by the Ford Foundation). When it was finished in 1969, it called for substantial improvements in all state legislatures.

What a Legislature Should Be

Before looking at the specific recommendations the Citizens Conference made for South Carolina, let us examine the Conference's general philosophy of state legislatures. According to its final report:

> The legislature, then, should on the one hand reflect its diverse citizenry as accurately as possible; through equitable apportionment and adequate salaries, its membership should be open to citizens of any social and economic group; through proper procedures and adequate staffing, it should enable and encourage its members to maintain constant and close two-way communication with their constituents; its procedures should be understandable enough, its business open enough, so that the public will know what is being done, why, and who is responsible. It should, on the other hand, have the staff, time, salaries and other resources it needs, to enable its members to concentrate on the public's business with the care and attention it deserves, and to understand the implications of different issues and courses of action better than can the average citizen preoccupied with the ins and outs of daily living. It is, therefore, both a "citizen" and a "professional" legislature. [pp.35-36]

Rating the Legislatures

To see how close the fifty state legislatures came to this ideal, the Citizens Conference devised what it called the FAIIR system of rating. The FAIIR system measured the basic minimum requirements citizens should expect their legislature to be: *functional, accountable, informed, independent, and representative.*

The Legislative Evaluation Survey was the instrument to see how the various legislatures ranked on the FAIIR scale. The Survey looked at nine basic functions of a legislature. They were:

Staffing: Is it adequate?

Compensation: "Legislators should be paid salaries that reflect the heavy demands and high importance of their job..."[p.41]

Time: Legislatures should not be subject to arbitrary and outmoded restrictions on length, frequency, or flexibility of session." [p.41]

Committee Structure: A manageable number of committees, with a reasonable committee assignment for each member.

Facilities: Adequate office space and meeting rooms?

Leadership: "The method of electing leaders, the length of terms, the powers of the presiding officers, and the powers of minority leaders should contribute to an orderly flow of business and a fair and effective distribution of power and authority." [p.41]

Rules and Procedures: These should provide for full, fair but efficient consideration of bills; rules should not be unnecessarily complex; legislators and the public should have ready access to information about the whole process.

Size: "Each house should be small enough in size so that it is manageable and so that all members can fully participate in its workings." [p.42]

Ethics: "There should be effective provisions for dealing with conflicts of interest and for regulating lobbyists." [p.42]

How Was the Survey Done? How Were the Standards Measured?

In 1969 the Citizens Conference staff and a technical consulting firm put together a questionnaire about the legislative process. Interviews were held with between 8 and 20 persons in each state, including legislators, staff, lobbyists, and the media. Each visit lasted around three days.

Next the Citizens Conference took the nine categories outlined above and had 2,000 legislative leaders, legislators, staff persons, political scientists, journalists and persons in other related fields rank them according to importance in the legislative process. The nine categories were then correlated to the FAIIR ratings. Finally, each state had its "score" figured and was ranked accordingly.

For example, California scored number one in functional ability; number three in accountable; number 2 in informed; number three in independent; and number two in representative. Still, its overall ratings made it number one in all five FAIIR categories. By computing the weighted scores for all states and then comparing them, the Citizens Conference came up with its order from 1 to 50.

How Did South Carolina Rank?

In the Citizens Conference study of 1969, South Carolina had an overall ranking of 44 out of 50. It was 50 in the functional category; 45 in accountable; 39 in informed; 10 in independent; and 46 in representative. According to the Conference, the South Carolina scores in the FAIIR criteria were in the lowest twenty percent.

Understandably, there was some resentment in South Carolina about the low ranking. However, there were also voices who called for changes to help legislators legislate more effectively. The *State* newspaper, in an editorial entitled "Legislative Assessment Should Spur Improvement," said:

> There is an obvious need for better staffing of the legislature and of its committees, both standing and interim....And there is need for providing the legislators themselves with better facilities for conducting their individual and representative business. The rank and file of both House and Senate membership have only a small desk on a crowded floor as an "office...."
>
> The most reasonable conclusion to draw from the Citizens Conference evaluation is that the time is at hand for a systematic appraisal (by South Carolinians) of the General Assembly's facilities and functioning....A true measure of our love for South Carolina will be the degree to which all of us, in and out of government, set about correcting our inadequacies.
>
> [The *State,* Sunday, February 14, 1971]

What Recommendations Were Made?

Back in 1971, when the Citizens Conference published its report, it also published recommendations for each of the 50 legislatures. For South Carolina's General Assembly it made 36 specific suggestions. These fell into the following general categories. It is interesting to note how many of these recommendations have been accomplished by the General Assembly.

Give the Legislature More Time

First, the Citizens Conference recommended giving the General Assembly more control over its time in session. Constituional amendments to give the General Assembly the power to call itself into special sessions, and to set the subject matter of those sessions were proposed. It also suggested a session after *sine die* adjournment to review veto messages from the Governor.

This question about time and the legislature arouses frequent comment in South Carolina, especially among those who claim our General Assembly meets too long. The Citizens Conference on State Legislatures gave some strong and telling arguments against putting time limits on legislatures:

> Of all the limitations under which state legislatures labor, the limitation on time is probably the most crippling and the most critical. It is used to "justify" the modest salaries, the negligible staff assistance, the inadequate facilities. These limitations, in turn, make it difficult for the legislature to make the best use of what little time it has. The core limitation is that of time; the others cluster around it....
>
> The amount of work to be done at any given time--and not any fixed and arbitrary rule--should determine how long a legislative session lasts. Assessing the amount of work can be done best (and perhaps only) by the legislature itself. Public problems are essentially open-ended....They remain public problems whether a legislature is in official session or not, and whether legislators are on salary or not. Insofar as the legislature is the surrogate of the people, the one institution more than any other through which the people come to grips with their continuing, common needs and problems, a legislature can never really adjourn.
> [pp.56, 58]

While today critics tend to call for shorter sessions, in states where such limitations existed in 1970, the Citizens Conference recommended that there be no less than 90 days with the ability for a legislature to call itself back into special session. As currently structured under South Carolina's limitation, the normal session would only be 66 days. Even with statewide days on Fridays and an extension beyond the mandatory adjournment date, the House total only came to 74 statewide days this year.

Better Organization

Second, the Conference advocated better organizational and orientation meetings before the session begins. The House implemented these suggestions beginning in the late 1970s.

Third, the Citizens Conference recommended streamlining and modernizing the committee systems by: reducing the number of committees; having uniform committee rules; referring bills to appropriate committee by jurisdiction; providing public notice of meetings and holding open meetings--except for security or personnel reasons. All of these have been put into practice by the S.C. House.

Other suggestions for committees were that committees should report on all bills they recommend for passage; that the standing committees should meet during the interim and issue reports; that operations and management committees oversee the two chambers; and that the appropriation bill be considered by dual committees. Once again--except for the last--these are now part of the House structure.

An excellent example in the South Carolina General Assembly of Committees meeting during the interim to continue the legislative process: the House Ways and Means Committee will begin work on the 1986-87 General Appropriation Bill in mid November of this year.

Raise Legislative Pay

Fourth, and probably most controversial, the Citizens Conference recommended raising legislative pay. Their final report said bluntly: "Salaries of members of the legislature are far too low in comparison with states of similar size and development. Current salaries of $4,000 would be doubled immediately and increased again within the next few years as other improvements in the legislature are made." [p.299] In fact at that time in 1970, the Conference stated that no legislator's salary in the U.S. should be below $10,000 per year.

Today it seems that minimum would be well over $20,000. Just taking into account inflation, and assuming the salaries in South Carolina had only been increased to $8,000, South Carolina legislative pay today should be $22,170.

Better Representation, A Better Process

The Conference suggested single-member districts as being more representative and equitable; this has been accomplished in South Carolina.

Smoothing the legislative process was a strong recommendation by the Citizens Conference. It included such methods as establishing a series of deadlines at various stages of the process; having an automatic calendar of bills; reprinting amended bills; including a statement of intent by the author of a bill and a summary by the Legislative Council; requiring a roll call vote on final bill passage; and banning "skeleton" bills--those with only the title, with body to be filled in after the filing deadline.

Some of these suggestions are less practical than others. Having a roll call vote on final passage of every bill, for example, would cause excessive delays and printing costs. The reason behind

this suggestion was, doubtlessly, to hold legislators accountable for their votes. For all practical purpose this already occurs since roll call votes can be demanded by ten members, and are often requested on controversial items which attract the public's interest. Furthermore, House Rules mandate a roll call vote for "passage of any bill or resolution on the contested Calendar on second reading" (Rule 7.7).

Stronger Staff Support

The Citizens Conference strongly advised the S.C. General Assembly to strengthen staff support. "Legislative research, fiscal, legal, and planning agencies should be adequately staffed to full utility and at suitable salary levels to enable the legislature to conduct continuous, year-round examination of state resources and expenditures as well as program review and evaluation of state agencies." [p.165]

This stronger staff support should be available for legislative leaders and rank-and-file members. The Conference stressed that such staff is a necessity for a modern legislature:

> "Fulltime professional staff" is not enough. The issues before state legislatures involve increasingly more complex questions in a widening array of fields. To deal with these issues, legislators need hard, accurate information and expert advice of very diverse sorts--and they need a professional staff that reflects many kinds of expertise. They need generalists, to be sure, but they also need a variety of specialists, such as statisticians, economists, systems analysts, engineers, water experts, and agriculturalists.
> [p.114]

Without such a staff, the report warns, legislators are dependent upon lobbyists or state agencies for information, a situation which certainly erodes their independence.

Independence is important for many reasons, not least because of the suggestion that the legislature take on the audit and oversight of executive departments and administrative agencies. Members of the South Carolina General Assembly will recognize another suggestion that has been implemented in our state, with the creation of the Legislative Audit Council as well as increased direct legislative oversight such as with the recent Education Improvement Act.

Finally, the Citizens Conference recommended adequate facilities for committees, including adequate committee rooms and hearing rooms; private, individual offices for every member; and proper press facilities. This suggestion has been met in South Carolina by the Blatt Building.

How Would South Carolina Rank Today?

If the Citizens Conference on State Legislatures came around today, would the S.C. General Assembly rate higher than 44th? After all the changes and improvements made during the past 15 years, one would like to hope so--but remember, the ratings were by comparison with other states. Other states have not been idle--modernizing legislatures has become a nation-wide effort. Still, it is easy to believe that South Carolina's efforts would have raised our General Assembly at least a notch or two.

In the end, however, the basic question is not where the South Carolina General Assembly stands in relationship to other legislatures, but how well it serves the people of this state.

With most of the recommendations by the Citizens Conference already in place, it would appear that the General Assembly is well on its way in maintaining high marks in all of the FAIIR categories: functional, accountable, informed, independent and representative. A legislature which does well in these areas is likely to do well for the people it represents. While critics may decry short-term faults and failures of the S.C. Legislature, none should be blind to its continuing achievements, or its solid accomplishments.

Prepared by House Research Office, 8/85, 5850

For More Information

For a more in-depth review of the evaluation procedures and the specific, point-by-point recommendations for all legislatures and for the S.C. General Assembly, members can consult either the *Complete Report* or its popular summary:

State Legislatures: An Evaluation of Their Effectiveness: The Complete Report by the Citizens Conference on State Legislatures. New York: Praeger Publishers, 1971.

The Sometime Governments: A Critical Study of the 50 American Legislatures. Citizens Conference on State Legislatures; written by John Burns. New York: Bantam Books, 1971.

Around the House

Speaker Schwartz Elected to Head Southern Speakers Group

During the week of July 21 through July 25, the Southern Legislative Conference met in Biloxi, Mississippi, for its 39th annual meeting. At the Biloxi meeting Speaker of the House Ramon Schwartz Jr. was elected chairman of the Southern States Speakers Conference. The Conference is an organization of House Speakers from the 15 states who participate in the SLC.

Speaker Schwartz is the first speaker from South Carolina to head the regional organization. He succeeds A. L. Philpott, Speaker of Virginia.

Carter Re-Elected to Senior Staff Position

Also at the Biloxi meeting, Sam Carter, Executive Director of House Research, was re-elected as chair of the Southern Legislative Conference's Senior Staff Planning Committee.